

EXHIBIT A

Documentation Regarding State ETC Jurisdiction



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 991
MONTGOMERY, ALABAMA 36101-0991

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
SECRETARY

PINE BELT CELLULAR, INC. and PINE
BELT PCS, INC.,

Joint Petitioners

PETITION: For ETC status and/or
clarification regarding the jurisdiction
of the Commission to grant ETC status
to wireless carriers.

DOCKET U-4400

ORDER

BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214(e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

DOCKET U-4400 - #2

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(e) effectuated in June of 1999, the APSC has no authority to regulate, in any respect, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

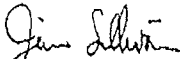
DOCKET U-4400 - #3

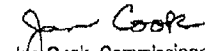
IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12th day of March, 2002.

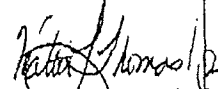
ALABAMA PUBLIC SERVICE COMMISSION


Jim Sullivan, President


Jan Cook, Commissioner


George C. Wallace, Jr., Commissioner

ATTEST: A True Copy


Walter L. Thomas, Jr., Secretary



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

August 7, 2009

In reply, please refer to:

Docket No. 09-07-24:UR:PAP

L. Charles Keller, Esquire
Wilkinson Barker Knauer, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037

Re: Docket No. 09-07-24 - Conexions LLC Seeks Designation as a Competitive Eligible Telecommunications Carrier

Dear Mr. Keller:

The Department of Public Utility Control (Department) acknowledges receipt of your July 10, 2009 letter filed on behalf of Conexions LLC (Conexions) seeking clarification as to whether the Department asserts jurisdiction to designate competitive eligible telecommunications carriers (CETC) in Connecticut. According to your letter, Conexions seeks designation as a CETC in Connecticut and believes that the Department does not assert jurisdiction to designate CETCs in the state and that carriers must apply to the FCC for certification.

The Department has reviewed your request and notes that it has approved requests for CETC status from wireline-based carriers. However, in the instant case, Conexions is a mobile virtual network operator. The Department does not regulate or license mobile carrier services' rates and charges and therefore, it is not subject to the Department's jurisdiction for the purposes of designating CETC status.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

A handwritten signature in cursive script, reading "K. Santopietro", followed by a circled "xaw" in the right margin.

Kimberley J. Santopietro
Executive Secretary



STATE OF DELAWARE
PUBLIC SERVICE COMMISSION
861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 739 - 4247
FAX: (302) 739 - 4849

July 15, 2009

L. Charles Keller, Jr.
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Ste. 700
Washington, DC 20037

RE: *Conexions LLC*

Dear Mr. Keller:

You have requested a statement confirming that the Delaware Public Service Commission ("PSC") lacks the jurisdiction to designate your client, Conexions, LLC ("Conexions"), as an Eligible Telecommunications Carrier ("ETC") under 47 U.S.C. § 214(e). You have represented that Conexions is a new mobile virtual network operator who seeks to participate in the FCC's Lifeline support program for qualifying low-income consumers.

Under state law, the Delaware PSC does not currently exercise any form of supervisory jurisdiction over wireless commercial mobile radio service ("CMRS") providers. *See* 26 *Del. C.* § 102(2) (excluding "telephone service provided by cellular technology, or by domestic public land mobile radio service" from the definition of "public utility"); 26 *Del. C.* § 202(c) (providing that the Delaware Commission has "no jurisdiction over the operation of domestic public land mobile radio service provided by cellular technology service or over rates to be charged for such service or over property, property rights, equipment of facilities employed in such service"). In fact, in granting ETC status in Delaware for Celco Partnership d/b/a Bell Atlantic Mobile, the FCC accepted the Delaware PSC's confirmation at that time that it did not have jurisdiction under state law to designate CMRS providers as ETCs. *See Federal-State Joint Board on Universal Service; Celco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, 16 FCC Rcd. 39 (2000), at ¶¶ 3-4. There have been no changes to state law regarding the PSC's authority over CMRS providers since the *Celco* decision.

L. Charles Keller, Jr.
July 15, 2009
Page 2

I hope this addresses your request for confirmation that the Delaware Public Service Commission does not have jurisdiction under state law to designate CMRS providers, such as Conexions LLC, as an ETC.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce H. Burcat".

Bruce H. Burcat
Executive Director



Public Service Commission of the District of Columbia
1333 H Street, N.W., 2nd Floor, West Tower
Washington, D.C. 20005
(202) 626-5100
www.dcpssc.org

July 22, 2009

Via First Class and Certified Mail


Mr. L. Charles Keller
Counsel for Conexions, LLC.
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037

Dear Mr. Keller:

Thank you for your July 10, 2009 letter stating Conexions, LLC's ("Conexions") intent to be designated as an eligible telecommunications carrier in the District of Columbia. As you are aware, the Public Service Commission of the District of Columbia ("Commission") does not have jurisdiction over wireless carriers operating in the District of Columbia, pursuant to section 34-2006(b) of the District of Columbia Code. Thus, the Commission has no authority to designate Conexions as an eligible telecommunications carrier in the District of Columbia.

Attached please find a copy of the relevant section of the District of Columbia Code for your information. Should you need anything further, please contact me at 202-626-5140 or rbeverly@psc.dc.gov.

Sincerely,


Richard A. Beverly
General Counsel

Enclosure



D.C. Council Home

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DC ST § 34-2006
Formerly cited as DC ST 1981 § 43-1456

DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

District of Columbia Official Code 2001 Edition Currentness
Division V. Local Business Affairs

Title 34. Public Utilities. (Refs & Annos)

Subtitle V. Telecommunications.

Chapter 20. Telecommunications Competition. (Refs & Annos)

➔ § 34-2006. Exemptions.

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia.

(c) This chapter shall not:

- (1) Apply to the provision, rates, charges, or terms of service of Voice Over Internet Protocol Service or Internet Protocol-enabled Service;
- (2) Alter the authority of the Commission to enforce the requirements as are otherwise provided for, or allowed by, federal law, including the collection of Telecommunications Relay Service fees and universal service fees;
- (3) Alter the authority of the Office of Cable Television and Telecommunications with respect to the provision of video services in the District of Columbia; or
- (4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

CREDIT(S)

(Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1456.

Effect of Amendments

D.C. Law 17-165 added subsec. (c).

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

For Law 17-165, see notes following § 34-403.

References in Text

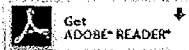
The federal Telecommunications Act of 1996, referred to in (b), is Pub. L. 104- 104, which is codified throughout Title 47 of the United States Code.

DC CODE § 34-2006

Current through June 17, 2009

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GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

October 24, 2011

Ms. Kasey C. Chow
Lance J.M. Steinhart, P.C.
Attorney At Law
1725 Windward Concourse
Suite 150
Alpharetta, GA 30005

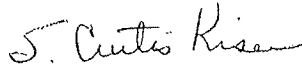
Re: Undocketed – Q Link Wireless LLC's ETC Designation

Dear Ms. Chow:

We received your October 18, 2011 letter advising that Q Link Wireless LLC, a commercial mobile radio service provider, wish to seek designation as an ETC in Florida. You also requested an affirmative statement that the Florida Public Service Commission no longer assert jurisdiction to designate commercial mobile radio service providers as eligible telecommunication carriers in Florida.

This letter acknowledges that the revisions to Chapter 364, Florida Statutes, changed the Commission's jurisdiction regarding telecommunications companies. I direct your attention to Chapter 364, Florida Statutes, for the proposition that the Federal Communications Commission, rather than this Commission is the appropriate agency to consider Q Link Wireless LLC's bid for ETC status.

Sincerely,


S. Curtis Kiser
General Counsel

cc: Beth W. Salak, Director, Division of Regulatory Analysis
Robert J. Casey, Public Utilities Supervisor, Division of Regulatory Analysis
Adam J. Teitzman, Attorney Supervisor, Office of the General Counsel
Ann Cole, Commission Clerk, Office of Commission Clerk

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AND SECRETARY
Debra A. Howland



PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

Tel. (603) 271-2431

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TDD Access: Relay NH
1-800-735-2964

Website:
www.puc.nh.gov

September 22, 2009

L. Charles Keller
Wilkinson Barker Knauer, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037

Re: Conexions, LLC


Dear Mr. Keller:

This is in response to your letter to the Commission, received July 10, 2009, concerning the above-referenced telecommunications carrier. You requested a statement from the Commission that Conexions, LLC (Conexions) is not subject to the jurisdiction of the Commission, inasmuch as this will affect how Conexions proceeds with efforts to become designated as an Eligible Telecommunications Carrier (ETC) for purposes of receiving universal service support pursuant to the federal Telecommunications Act.

You attention is directed to a published order of the Commission, *RCC Minnesota, Inc.*, 88 NH PUC 611 (2003) (Order No. 24,245). In that order, the Commission acknowledged that it lacks state-law authority to regulate wireless carriers, *id.* at 615, citing Section 362:6 of the New Hampshire Revised Statutes Annotated, and therefore the Commission concluded that the agency is likewise devoid of jurisdiction to consider a request for ETC designation from the carrier. In my judgment, Conexions as a user of both cellular and PCS (personal communications service) spectrum to provide commercial mobile radio service, may rely on the *RCC Minnesota* decision for the proposition that the Federal Communications Commission, as opposed to the New Hampshire Public Utilities Commission, is the appropriate agency to consider Conexions's bid for ETC status.

Please feel free to call me at 603-271-6005 if I can be of further assistance.

Sincerely,


F. Anne Ross
General Counsel

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

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PETER McGOWAN
General Counsel

JACLYN A. BRILLING
Secretary

September 1, 2009

L. Charles Keller
Wilkson Barker Knauer, LLP
2300 N Street, NW Suite 700
Washington, DC 20037

RE: Matter 09-01517/Case 09-C-0600 - Conexions LLC Request for Letter Clarifying
Jurisdiction over Wireless CETC

Dear Mr. Keller:

I am responding to your letter to Secretary Brilling, dated July 10, 2009 on behalf of Conexions LLC (Conexions). In your letter, you requested a statement that the State of New York does not exercise jurisdiction over Commercial Mobile Radio Service (CMRS) providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designation under 47 U.S.C. §214(e) and 47 C.F.R. §54.201 et seq. You indicated that Conexions is a mobile virtual network operator ("MVNO") seeking designation as a competitive eligible telecommunications carrier ("CETC") in New York.

In response to your request, please be advised that the New York State Public Service Law §5 provides that:

Applications of the provisions of this chapter [the Public Service Law] through one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the [New York State Public Service] commission...makes a determination, after notice and hearing, that regulation of such services should be reinstituted to the extent found necessary to protect the public interest because of a lack of effective competition.

Mr. Keller

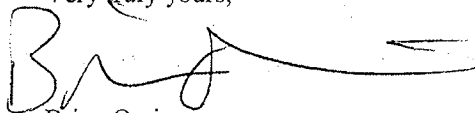
-2-

September 1, 2009

The New York State Public Service Commission has not made a determination that regulation should be reinstituted under Public Service Law §5. Consequently, based on the representation by Conexions that it is a mobile virtual network operator ("MVNO") provider, Conexions would not be subject to the application of the Public Service Law and therefore, the jurisdiction of the New York Public Service Commission for purposes of making the Eligible Telecommunications Carrier designation.

As this letter is responsive to your request for a statement, Matter 09-01517/Case 09-C-0600 will be closed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Brian Ossias', with a long horizontal flourish extending to the right.

Brian Ossias
Assistant Counsel

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

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PETER McGOWAN
General Counsel

JACLYN A. BRILLING
Secretary

August 13, 2009

L. Charles Keller
Wilkinson Barker Knauer LLP
2300 N Street, NW
Suite 700
Washington, DC 20037

Re: Case 09-C-0600 – Petition of Conexions LLC for a Declaratory Ruling
that the Company, a wireless telephone service provider, is not subject
to Commission jurisdiction

Dear Mr. Keller:

I am responding to your letter to Secretary Brillling, dated July 10, 2009, on behalf of Conexions LLC ("Conexions"). In your letter, you requested a statement that the State of New York does not exercise jurisdiction over wireless telephone service providers for purposes of making determinations concerning eligibility for Competitive Eligible Telecommunications Carrier designations under 47 USC §214(e) and 47 CFR §54.201 et seq. You indicated that Conexions is a mobile virtual network operator in several states, including New York.

In response to your request, please be advised that the New York State Public Service Law §5(3) provides that:

Application of the provisions of this chapter [the Public Service Law] to one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the [New York Public Service] commission, . . . makes a determination, after notice and hearing, that regulation of such services should be reinstituted to the extent found necessary to protect the public interest because of a lack of effective competition.


In addition, the New York State Public Service Law §5(6)(a) provides that:

Application of the provisions of this chapter [the Public Service Law] to cellular telephone services is suspended unless the [New York Public Service] commission, . . . makes a determination, after notice and hearing, that suspension of the application of the provisions of this chapter shall cease to the extent found necessary to protect the public interest.

The New York State Public Service Commission has not made a determination that regulation should be reinstituted under Public Service Law §5. Consequently, based on the representation by Conexions that it is a wireless telephone service provider, Conexions would not be subject to the application of the Public Service Law and therefore, the jurisdiction of the New York Public Service Commission for the purposes of making the Competitive Eligible Telecommunication Carrier designation.

As this letter is responsive to your request for a statement, Case 09-C-0600 will be closed.

Sincerely,


Saul M. Abrams
Assistant Counsel

cc: Jaclyn A. Brilling, Secretary
Maureen Harris, Commissioner

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-100, SUB 133c

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Designation of Carriers Eligible for Universal)
Carrier Support) ORDER GRANTING PETITION

BY THE COMMISSION: On August 22, 2003, North Carolina RSA3 Cellular Telephone Company, d/b/a Carolina West (Carolina West), a commercial mobile radio service (CMRS) provider, filed a Petition seeking an affirmative declaratory ruling that the Commission lacks jurisdiction to designate CMRS carrier eligible telecommunications carrier (ETC) status for the purposes of receiving federal universal service support.

In support of its Petition, Carolina West stated that it was a CMRS provider authorized by the Federal Communications Commission (FCC) to provide cellular mobile radio telephone service in North Carolina, and that the FCC had clearly recognized that CMRS carriers such as Carolina West may be designated as ETCs. ETC status is necessary for a provider to be eligible to receive universal service support. Section 214(e)(6) of the Telecommunications Act provides that if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC is charged with making the ETC determination. The FCC has stated that, in order for the FCC to consider requests pursuant to this provision, a carrier must provide an "affirmative statement" from the state commission or court of competent jurisdiction that the state lacks jurisdiction to perform the designation. To date, several state commissions have declined to exercise such jurisdiction.

North Carolina has excluded CMRS from the definition of "public utility." See, G.S. 62-3(23)). Pursuant to this, the Commission issued its Order Concerning Deregulation of Wireless Providers in Docket Nos. P-100, Sub 114 and Sub 124 on August 28, 1995, concluding that the Commission no longer has jurisdiction over cellular services. Accordingly, Carolina West has now requested the Commission to issue an Order stating that it does not have jurisdiction to designate CMRS carriers ETC status for the purposes of receiving federal universal service support.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that it should grant Carolina West's Petition and issue an Order stating that it lacks jurisdiction to designate ETC status

for CMRS carriers. As noted above, in its August 28, 1995, Order in Docket Nos. P-100, Sub 114 and Sub 124, the Commission observed that G.S. 62-3(23)j, enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction. 47 USC 3(41) defines a "state commission" as a body which "has regulatory jurisdiction with respect to the intrastate operation of carriers." Pursuant to 47 USC 214(e)(6), if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC must determine which carriers in that class may be designated as ETCs. Given these circumstances, it follows that the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC. Accord., Order Granting Petition, ALLTEL Communications, Inc., June 24, 2003.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August, 2003.

NORTH CAROLINA UTILITIES COMMISSION

Patricia Swenson

Patricia Swenson, Deputy Clerk

PC082203.01

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

APPLICATION OF ADVANTAGE CELLULAR
SYSTEMS, INC. TO BE DESIGNATED AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER

)
)
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DOCKET NO.
02-01245

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier* ("Application") filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission ("FCC") to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority's decision in *In re: Universal Service Generic Contested Case*, Docket 97-00888, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

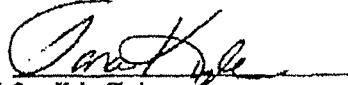
In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."³ Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."⁴


The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 12208, 12264, ¶ 113 (June 30, 2000).

⁴ *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, consent, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION DOCUMENT CONTROL
AT RICHMOND, APRIL 9, 2004

IN RE:

APPLICATION OF VIRGINIA CELLULAR LLC

2004 APR -9 A 11:46
CASE NO. PUC-2001-00263

For designation as an eligible
telecommunications provider under
47 U.S.C. § 214(e) (2)

ORDER INVITING COMMENTS AND/OR REQUESTS FOR HEARING

On December 21, 2001, Virginia Cellular LLC ("Virginia Cellular") filed an application with the State Corporation Commission ("Commission") for designation as an eligible telecommunications carrier ("ETC"). This was the first application by a Commercial Mobile Radio Service ("CMRS") carrier for ETC designation.¹ Pursuant to the Order Requesting Comments, Objections, or Requests for Hearing, issued by the Commission on January 24, 2002, the Virginia Telecommunications Industry Association and NTELOS Telephone Inc. ("NTELOS") filed their respective comments and requests for hearing on February 20, 2002. Virginia Cellular filed Reply Comments on March 6, 2002. Our Order of April 9, 2002, found that § 214(e)(6) of the Act is applicable to Virginia Cellular's application because this Commission has not asserted jurisdiction over CMRS carriers and that Virginia Cellular should apply to the Federal Communications Commission ("FCC") for ETC designation.

Virginia Cellular filed its Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia with the FCC on April 26, 2002. On January 22, 2004, the FCC released its order designating Virginia Cellular as an ETC in specific portions of its licensed

¹ Virginia Cellular is a CMRS carrier as defined in 47 U.S.C. § 153(27) and is authorized as the "A-band" cellular carrier for the Virginia Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland and the cities of Harrisonburg, Staunton, and Waynesboro.

service area in the Commonwealth of Virginia subject to certain conditions ("FCC's January 22, 2004, Order").²

The FCC's January 22, 2004, Order further stated that Virginia Cellular's request to redefine the service areas of Shenandoah Telephone Company ("Shentel") and MGW Telephone Company ("MGW") in Virginia pursuant to § 214(3)(5) of the Telecommunications Act of 1996 ("Act") was granted subject to the agreement of this Commission. On March 2, 2004, the FCC filed its January 22, 2004, Order as a petition in this case.³

Section 214(e)(5) of the Act states:

SERVICE AREA DEFINED. - The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

In this instance, the FCC has determined that the service areas of Shentel and MGW, which are both rural telephone companies under the Act, should be redefined as requested by Virginia Cellular.⁴ The FCC further recognizes that the "Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to determine the redefinition proposal and examine whether it should be approved."⁵

² CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*.

³ See paragraph 45 of the FCC's January 22, 2004, Order. The FCC, in accordance with § 54.207(d) of its rules, requests that the Virginia Commission treat this Order as a petition to redefine a service area under § 54.207(d)(1) of the FCC's rules. A copy of the petition can be obtained from the Commission's website at: <http://www.fcc.state.va.us/fcc/caseinfo.htm>.

⁴ The FCC denied Virginia Cellular's request to redefine the study area of NTHLOS. See paragraph 50 of the FCC's January 22, 2004, Order.

⁵ The FCC's January 24, 2004, Order at paragraph 2. (citations omitted)

The Commission finds that interested parties should be afforded the opportunity to *comment and/or request a hearing regarding the FCC's petition to redefine the service areas of Shentel and MGW.* We note that the FCC believes that its proposed redefinition of these service areas should not harm either Shentel or MGW.⁶ However, we request any interested party to specifically address in its comments whether our agreeing to the FCC's proposal to redefine the service areas of Shentel and MGW would harm these companies.

NOW UPON CONSIDERATION of all the pleadings of record and the applicable law, the Commission is of the opinion that interested parties should be allowed to comment or request a hearing regarding the FCC's proposed redefinition of Shentel's and MGW's service areas.

Accordingly, IT IS ORDERED THAT:

(1) Any interested party desiring to comment regarding the redefinition of Shentel's and MGW's service areas may do so by directing such comments in writing on or before May 7, 2004, to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested parties desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>.

(2) On or before May 7, 2004, any interested party wishing to request a hearing regarding the redefinition of Shentel's and MGW's service areas shall file an original and fifteen (15) copies of its request for hearing in writing with the Clerk of the Commission at the address set forth above. Written requests for hearing shall refer to Case No. PUC-2001-00263 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter.

⁶ See paragraphs 43 and 44 of the FCC's January 22, 2004, Order.